SINGLE BENCH

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P.(C.) NO. 7152 / 2006

Petitioner : K. R. Hari
S/o. Shri Raghawan Nayar
Aged about 43 years
R/o- Street No. 5 near Jain Dairy
Vidutnagar Durg
District Durg (C.G.)

P.R. No. 2444/06
Presented by Shri Sangeeta Bhatt
dated 13/12/06

Versus

Respondent : Smt. S.Sangeeta
W/o- Shri K.R. Hari 40 years
Lecturer, Government Girl Higher Secondary School Bhilai-3, R/o- KCH street Quarter no. 11/B Sector –8 Bhilai, District Durg (C.G.)

WRIT PETITION U/A 227 OF THE CONSTITUTION OF INDIA

XI-HC-78

(14)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक W.P.(C) No. 7152/2006 / सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	09.02.2007 Shri Prafull Bharat, counsel for the petitioner. Heard on admission. The petitioner has filed this petition under Article 227 of the Constitution of India, challenging the legality, validity and propriety of the order dated 8.12.2006 passed in Case No. 25/2006 pending in the Court of III Additional Principal Judge, Family Court Durg, District Durg (C.G.). By the aforesaid order, the said Court while deciding an interim application filed under Section 12 of the Guardians and Wards Act permitted the respondent-mother to meet her children according to the time schedule mentioned in the order by the Court. The brief facts, as stated by learned counsel for the petitioner, are that the petitioner had earlier filed a civil suit (Matrimonial) for passing a decree for divorce under Section 13 (1) of the Hindu Marriage Act, 1955 vide No.512-A/2005. The aforesaid suit was filed on the ground of adultery. The suit was decreed by the judgment dated 2.8.2006 and the marriage existing between the parties was dissolved by a decree of divorce. It is stated that during the pendency of the aforesaid civil suit, the proceedings u/s 11 of The Guardians and Wards Act was filed by the mother seeking custody of her two minor children i.e. Daughter namely Ku. Shruti aged about 11 years and son namely Master Shreyas aged about 8 years. During the pendency of aforesaid proceedings an interim application u/s 12 of the	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

aforesaid Act was also filed by her asking the interim custody of the aforesaid two children. It is on this interim application, the impugned order dated 8.12.2006 has been passed.

A perusal of this order would show that it is a consent order. The trial Court has recorded in the order itself that the impugned order regarding meeting time of the mother with the children is being passed with the consent of both the parties i.e. the petitioner and the respondent. The contents of the order would show that after taking their consent only, the said order containing the time schedule for meeting of the mother with her children has been passed.

Learned counsel for the petitioner assails the validity of the order on the ground that the trial Court has wrongly recorded that the father has given the consent and the order is in contravention of the Sections 12 & 25 of the Guardians and Wards Act.

I have gone through the contents of the impugned order. Undisputedly, it is mentioned in the order that the same has been passed with the consent of both the parties, therefore, the presumption is that the consents recorded in the order are correct and unless contrary is shown, it cannot be held that the order was not passed with the consent of both the parties.

It was pointedly asked by this Court to the learned counsel for the petitioner as to whether after coming to the knowledge of the petitioner that the order has been passed with the consent of the parties, the petitioner has filed any application for modification of such order bringing to the notice of the Judge that

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मामला क्रमांक ..... / सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

he has not given any such consent? On this, learned counsel for the petitioner submits that no such application has been filed before the trial Court and directly this petition has been filed before this Court.

In the facts and circumstances of the case, I am not inclined to entertain such contentions raised by learned counsel for the petitioner against the clear cut mentioning in the order that the order was passed with the consent of the petitioner. If the order was passed without taking the consent of the petitioner and his consent was wrongly recorded by the trial Court in its order, then the petitioner was free to move the said Court saying that his consent has wrongly been recorded, but the same has not been done by the petitioner.

There appears to be no illegality in the order passed by the trial Court on the face of it. Moreover, this Court, while hearing a petition under Article 227 of the Constitution of India, is mainly concerned with the decision making process of the Court and not with the decision of the Court. I do not find any illegality or infirmity in the decision making process which the Court has adopted.

The petition being devoid of merit, the same is liable to be dismissed and it is dismissed in limine without notice to the other side.

Consequently, M.W.P. No. 5043/2006 stands disposed of.

Sd/-
Sunil Kumar Sinha
Judge

P.T.O.

Rao